

# State of Colorado



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**State Personnel Board**  
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## **AGENDA SPECIAL BOARD MEETING February 26, 2016**

A special meeting of the State Personnel Board will be held on February 26, **2016 at the Ralph Carr Judicial Center, 1300 Broadway, Conference Room I-D, Denver, Colorado 80203.** The public meeting will commence at **10:00 a.m.**

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by February 19, 2016.

### **CALL TO ORDER**

- Attendance.
- Disclosure of any potential conflicts of interest with regard to present Board business and notice of recusal, if applicable.

### **I. PENDING MATTER:**

#### **MOTION AND FINAL BOARD ORDER OF THE STATE PERSONNEL BOARD REGARDING AN INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE ON APPEAL TO THE STATE PERSONNEL BOARD**

- A. Kathy Starling v. Department of Revenue, Tax Audit and Compliance Division, State Personnel Board case number 2014G013 (August 21, 2015).

Complainant appealed Respondent's Step II Grievance Decision holding that she would not be allowed to submit an application for the position of Tax Examiner II (TE II) in the Taxpayer Services Division after the application period had closed. Complainant argued that Respondent's decision was arbitrary or capricious or contrary to rule or law, and constituted unlawful gender discrimination in violation of the Colorado Anti-Discrimination Act (CADA). Complainant asked for an order providing all damages to make her whole, including but not limited to: placement in the TE II position; being given all training opportunities provided to the position; an award of back pay representing a 15% pay increase which Complainant would have earned in the position from the date of the incumbent's placement into the TE II position; front pay in the same amount from the date of judgment to placement in the position; an award of benefits from the date of hire into the position to the date of placement into the position; and an award of attorney fees and costs.

The Department of Revenue, Tax Audit and Compliance Division (Respondent) argued that the TE II selection process was performed fairly and without unlawful discrimination, that the position was properly posted as a reallocation without irregularities and that Complainant's failure to see that posting and apply for it during the application period was not the result of wrongdoing by Respondent. Respondent asked that the decision to deny Complainant's request to submit an application after the application period had closed be upheld; Complainant's claim of gender

discrimination be denied; and Respondent's requests for attorney fees and costs to be granted.

The Administrative Law Judge affirmed Respondent's decision not to allow Complainant to submit an application for the position of Tax Examiner II after the application period had closed and affirmed the Respondent's Step II grievance decision. No attorney's fees were awarded and the case was dismissed with prejudice and referred to the State Personnel Director for further action if appropriate.

## **II. REVIEW OF PRELIMINARY RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE TO GRANT OR DENY PETITION FOR HEARING**

### **A. Stacy Bishop v. Department of Corrections, San Carlos Correctional Facility, State Personnel Board case number 2016G007.**

Complainant appeals Respondent's insistence that he abide by the DOC's Administrative Regulation 1450-31, "Appearance and Dress Code," which requires that all male employees wear long hair secured above their uniform shirt collars and under their uniform caps, while allowing females with long hair to simply secure their hair above their uniform shirt collars without requiring that they keep their hair under a uniform cap. Complainant claims that this regulation discriminates against him, as a male, on the basis of gender. He also alleges that he was discriminated against on the basis of his national origin/ancestry. As relief, Complainant requests that he be able to continue to wear his hair in a bun without keeping it under his uniform cap without being considered insubordinate or in violation of department regulations and free of negative or harassing comments.

Respondent argues that Complainant has failed to establish grounds that merit a hearing in this case. More specifically, Respondent contends that Respondent's Appearance and Dress Code is not discriminatory on the basis of gender and that, therefore, Complainant's petition for a hearing and request for relief should be denied.

On February 3, 2016, the Administrative Law Judge issued a Preliminary Recommendation that the petition for hearing be **granted**.

## **III. EXECUTIVE SESSION**

**ADJOURN:**